IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPEAL NO. 380 OF 1997

The State of Maharashtra ..... Appellant.

versus

1. Ramesh Shankar Junavane)
2. Raju Doulat Devade)..... Respondents.

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Shri A.S.Shitole APP for the State.
Shri Madhav Jamdar for Respondents.

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CORAM ; V.G.PALSHIKAR &
R.C. CHAVAN, JJ.

DATED; 5TH JULY, 2005

ORAL JUDGMENT (Per Palshikar, J.);

1. Being aggrieved by the judgment dated 8-1-1997 passed by the VI Additional Sessions Judge, Pune in Sessions Case No. 73 of 1996, the appellant has preferred this appeal on the ground mentioned in the memo of appeal as also canvassed before us.

2. With the assistance of the learned advocate appearing on behalf of the appellant and the learned APP, we have scrutinised the entire record, and re-appreciated the evidence both oral and documentary as is raised on the record before the Additional Sessions Judge.

3. The prosecution story stated briefly is that on 25-11-1995 at about 8.30 p.m. Asrabai and Sozarbai had gone near the school building of Kendriya vidyalaya in Ksturba Vasahat Zopadapatti, Junavane Nagar, Aundh, Pune to answer the call of nature. When they were so passing by near the building they were confronted by the accused and told that the place around the school is not the place where people can answer the call of nature and that they were appointed as watchmen in the place. Thereupon the victim came on the spot and there ensued a quarrel between the accused and the victim. Blows were exchanged. The victim fell, then got up and went home. On reaching home, the two women found the victim injured who subsequently died. Complaint was lodged of the assault by the accused persons. Investigation was conducted, accused were arrested and as a result of that investigation, accused were prosecuted for intentionally causing death of the victim. The prosecution has examined as many as ten witnesses to prove its case.

4. The learned trial Judge appreciated the entire evidence on record and came to the conclusion that the prosecution has miserably failed to prove any case of murder by the accused persons. He therefore proceeded

to acquit them of all the charges levelled against them. It is this order which is impugned before us by the State.

5. P.w.1 Asrabai claims to be the eye witness and has deposed that the entire incident had occurred on 25-11-1995. According to this witness Subhash the victim came there and asked the accused as to why accused was abusing P.w.1 Asrabai and p.w.7 Sozerbai, upon which there ensued a fight and accused no.1 stabbed Subhash with knife on his back. The witness has very specifically stated that after the assault with the knife Subhash ran away towards the house. Then she deposed as to the lodging of the report etc. and the witness was extensively cross examined. In her cross examination she has admitted the following things.

1. That the edges of some iron bars have come out from the cement construction at the site.

2. That they had gone for answer the call of nature near the tank which constructed with cement and iron bars.

3. It is true that on the left side of tank cement is removed and some pieces of iron bar has come out.

4. It is true that there was scuffle between the victim Subhash and the accused and also exchange of beating.

5. It is true that during the scuffle Subhash had fallen down near the tank.

6. It is true that when Subhash fell down he got up immediately and ran away towards house.

7. This witness proceeds to admit in para 8 of her deposition that she had not seen the knife Article 10 any time previously and saw it for the first time in the court.

6. These admissions make virtually impossible for us to believe the testimony of this witness when she alleges that stabbing of the victim by the accused with knife and having failed to identify the knife in the court.

7. Then there is evidence of recovery of knife from open place. However this recovery is from open space and cannot therefore be attached any significance. Even if the recovery is accepted and the seizure of blood stained clothes, nothing is brought on record by the prosecution to connect the same to the accused and the blood of the victim. In the absence of such connection, merely because the knife was recovered or clothes were stained with blood, it cannot be presumed that the accused are the persons and are the perpetrators of the crime.

8. Then there is evidence of other lady who had gone for easing near the kendriya vidyalay wall. She, to some extend corroborates the evidence of P.w.1. But a scrutiny of this evidence and of P.w.1 will show that their evidence is full of omissions and contradictions. The learned trial Judge has taken into consideration all these aspects and therefore in para 17 of his judgments stated, which reads thus:

> *"It is clear from the evidence of four eye witness examined by the prosecution that, the knife or dagger Art. No.10 was never shown to them in the course of investigation by police. This circumstance is not explained*

by the prosecution. The only reasonable inference that can be drawn from this circumstance is that the dagger or knife Arti.No.10 was not used by the accused No.1 and it was not seen with accused no.1 at or about the relevant time by these witnesses. This circumstance also materially affects the prosecution case that, the knife and dagger Art.No.10 was recovered at the instance of the accused no.1. The eye witness account of the incident is not cosnistent, natural and convincing. It appears that the eye witnesses have not stated the whole truth. It also appears that incident must not have occured as alleged by the prosecution."

9. Then the learned Judge proceeds to discuss with circumstantial evidence which is in the shape of recovery and blood stained clothes of the accused, both of which is proved. Then the learned Judge proceeds to reject the evidence of panch of recovery, in view of the fact that the panch witness has categorically admitted that he signed the panchanama in the police station. The credibility of this document is therefore lost. Then he has appreciated the question of recovery of knife from the point of view of eye witnesses each

of whom has categorically admitted in their examinations that this knife was never shown to them during the investigation. In para 25 the learned Judge considers the complicity of accused no.2 and observes that even if the entire evidence of P.w.1 Asrabai and P.w.2 is accepted totally, they say nothing about accused no.2. He was also a security guard appointed by kendriya Vidyalay along with accused no.1 and his presence at the place was therefore natural. He did, also the same act as that of accused no.1 and in the absence of any overt act being attributed to him there is no question of his being guilty of murder with the aid of section 34. In any event, it was in total appreciation of evidence that the learned Judge by his well reasoned order has acquitted the accused of all the offences. In our opinion, the findings recorded by the learned Judge are based on sound appreciation of evidence, proper analysis of circumstantial evidence and correct application of law to the facts of the case. There is no error whatever in the judgment impugned and consequently no need to interfere with the sound and reasoned order of acquittal. In the result therefore, the appeal fails and it is dismissed.

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